

## Book Review

### Is There a Caring Crisis?

*The Feminine Economy and Economic Man: Reviving the Role of the Family in the Postindustrial Age*, Shirley P. Burggraf. Reading, MA: Perseus Books, 1999 (2d ed.). Pp. 271. \$15.00.

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#### Introduction

Economist Shirley Burggraf's book *The Feminine Economy and Economic Man* claims that a crisis confronts Western Civilization: we are investing too little in the next generation.<sup>1</sup> A fundamental premise of Burggraf's analysis is that an ample supply of resources for children is central and indispensable to the maintenance of a good society.<sup>2</sup> Although Burggraf gives some attention to public or collective investments in children (most notably public education), her principal concern is the private resources that parents devote to their own children. She attaches special importance to parents' personal attention and suggests that there looms a shortage of the kind of direct, hands-on care that parents, and especially mothers, have customarily supplied within the family and outside the market economy.<sup>3</sup> An undersupply of parental nurture threatens to undermine children's chances of growing up to become worthy and productive adults, with negative consequences for those children and for society as a whole.<sup>4</sup>

If a shortfall in parental investment in children indeed confronts us at the dawn of the twenty-first century, what is the solution? Although Burggraf recommends a menu of measures for strengthening the family and improving education, she puts a great deal of faith in one item in particular: an intriguing but impractical proposal for reforming Social Security.<sup>5</sup> She suggests that the existing program be scrapped in favor of

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<sup>1</sup> See SHIRLEY P. BURGGRAP, *THE FEMININE ECONOMY AND ECONOMIC MAN* 1-3 (2d ed. 1999).

<sup>2</sup> See *id.* at 2.

<sup>3</sup> See *id.*

<sup>4</sup> See *id.* at 6-7.

<sup>5</sup> See *id.* at 67-107.

one that incorporates a "parental dividend."<sup>6</sup> Her proposal would introduce three key changes in the program's structure. First, although her old-age pension scheme would be publicly mandated and administered, each person's retirement fund would be maintained separately.<sup>7</sup> The proposal would thus eliminate the current elements of pooling and redistribution among beneficiaries at different income levels.<sup>8</sup> Second, the money in the fund used to support a beneficiary's retirement would come from a tax on the income of a beneficiary's own children.<sup>9</sup> A person's entitlement to benefits from a private fund would therefore depend on the beneficiary having children of his or her own. Finally, the amount available to fund a person's old age would depend on how much that person's offspring paid into the fund. That amount would in turn depend on the children's duration of employment and level of earnings—that is on their success in the marketplace for labor.<sup>10</sup>

How does Burggraf negotiate the distance between her theory of a nurture shortage and her proposal to overhaul a beloved, but beleaguered social program<sup>11</sup> along the lines of the parental dividend? Finessing this link requires Burggraf's book to be about much more than old-age pension programs and to cover a great deal more ground than the usual brief for Social Security reform. In 200 pages, Burggraf puts forward a host of propositions based on a dizzying array of assumptions about history, psychology, ideology, child development, the nature of the feminist revolution, social evolution, and people's responses to economic incentives.

Perhaps the most distinctive feature of Burggraf's tour through these topics is her methodology. Burggraf is an economist. In an attempt to construct a reasonably rigorous framework within which to preach to the unconverted, Burggraf employs the basic tools of economic analysis with mixed success. She assumes, controversially, that private and emotionally

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6 See *id.* at 69-81. As currently structured, Social Security is funded through taxes on wages and maintains no pretense of actuarial soundness. It is a pay-as-you-go scheme that depends on taxes levied on the working population to fund outlays to retirees. A continuous supply of taxpaying productive workers is essential to keep the system afloat. For a description of the nuts and bolts of Social Security, see SAR A. LEVITAN ET AL., *PROGRAMS IN AID OF THE POOR* (7th ed. 1998).

7 See BURGGRAP, *supra* note 1, at 69.

8 On the redistributive element in Social Security, see MIMI ABRAMOWITZ, *REGULATING THE LIVES OF WOMEN* 249 (1988). Although Burggraf states that "the parental dividend does not preclude a safety net," she would reserve mandatory old-age investments for parents alone. BURGGRAP, *supra* note 1, at 80. The implication is that nonparents would have to save for their own retirement or fall back on an ungenerous means-tested program.

9 See BURGGRAP, *supra* note 1, at 69.

10 See *id.* at 69.

11 On the crisis in the Social Security program and recent proposals for reform see generally HENRY J. AARON & ROBERT D. REISCHAUER, *COUNTDOWN TO REFORM: THE GREAT SOCIAL SECURITY DEBATE* (1998); *SOCIAL SECURITY IN THE 21ST CENTURY* (Eric R. Kingston & James H. Schulz, eds, 1997) (hereinafter *SOCIAL SECURITY*).

freighted human functions like childrearing, which are traditionally performed within families, can fruitfully be analyzed using this approach. The burgeoning field of the economics of the family demonstrates that there is a respectable pedigree for this application of the methods of economics<sup>12</sup> and Burggraf's book is very much in keeping with this body of work. Nevertheless, Burggraf's analysis shares many of the defects inherent in trying to apply economic concepts designed primarily to deal with market phenomena to the messy and mysterious realms of family life and intimate relations.

Ultimately, however, the book's principal failing lies not in the inadequacy of the method but in the dubious premises that the author is willing to accept. In particular, her suggestion that her proposed pension system reforms will significantly increase investments in children necessarily rests on assuming that the current structure of Social Security is the principal cause of any putative underinvestment in children. But if children are receiving too little of society's time or attention, the most important causes almost surely lie elsewhere. And not only is the parental dividend no cure for those maladies, but it can be expected to introduce fresh difficulties that are as likely to worsen as to improve the welfare of future generations. Thus, although Burggraf takes us on a lively and exhilarating ride, in the end she fails to make out her case for the parental dividend because she leaves out too much, assumes too much, and ignores too many potential perverse consequences and practical difficulties. But as with many bold proposals that will never see the light of day, Burggraf's scheme nonetheless advances our understanding by testing our assumptions and forcing us to confront some of our current public welfare dilemmas.

## I. Burggraf's Parental Dividend Proposal

Burggraf's argument rests on the assumption that bearing and raising children can be viewed as a form of parental investment. This makes economic sense: children require the expenditure of large quantities of time and money, both of which have undeniable economic value. Economists recognize that children have a dual aspect: they provide satisfaction or "consumption" for parents,<sup>13</sup> but they also represent human

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<sup>12</sup> See generally GARY S. BECKER, *TREATISE ON THE FAMILY* (1991); NANCY R. FOLBRE, *WHO PAYS FOR THE KIDS?* (1994); *ECONOMICS OF THE FAMILY: MARRIAGE, CHILDREN, AND HUMAN CAPITAL* (Theodore W. Schultz ed., 1974).

<sup>13</sup> See, e.g., BECKER, *supra* note 12; MARC NERLOVE ET AL., *HOUSEHOLD AND ECONOMY: WELFARE ECONOMIES OF ENDOGENOUS FERTILITY* (1987); Rolf George, *On the External Benefits of Children*, in *KINDRED MATTERS: RETHINKING THE PHILOSOPHY OF THE FAMILY* 209, 209-17 (D.T. Meyers et al. eds., 1987) (describing how economists have modeled children primarily as a consumption good). The fact that childrearing generates a blend of consumption value and other

capital, which in turn can produce goods, services, and other forms of wealth.<sup>14</sup> That children bring pleasure and satisfaction to their parents does not make the idea of children as an investment less valid or less heuristically important. On the simplest model, therefore, children serve as a kind of black box into which parents and others pour valuable resources in the hope and expectation that those investments will yield valuable returns.

The economic model of parental investment must assume discoverable relationships between inputs and outputs. Different children grow up possessing various amounts of human capital, which presumably reflect in some regular and systematic way the amount and quality of the inputs invested in them. That human capital is then put to work generating payoffs in various contexts, including the labor market. For Burggraf, the trouble with current arrangements lies in the relationship between inputs and payoffs from childrearing. In our private enterprise system, she argues, parents make the lion's share of investments in future generations, but they do not receive a fair return on their efforts because the gains from enhanced human capital do not redound entirely or even predominantly to the parents who bear the costs of creating it.<sup>15</sup> Rather, a large part of those gains are externalized or realized by others.<sup>16</sup> Because parents are economically rational, their investment decisions, including the amount and quality of care that they provide, will be influenced to a significant extent by some balance of the monetary costs and expected returns from raising children. If payoffs are shunted elsewhere, that balance will be thrown off and investments will decline.

In her attempt to identify the beneficiaries of the gains in human capital generated by investments in childrearing, Burggraf focuses almost exclusively on children's future value as workers. That is where Social Security enters the picture. The taxes workers pay to support any mandatory old-age pension system represent the returns on the investment that these workers' parents made in their children's future productivity. Burggraf's argument runs something like this: because Social Security has long since ceased to be an actuarially sound insurance program, its continued viability depends on the collective support of the generation of workers who are paying into the Social Security fund. Those revenues in turn depend on the offspring's efforts and productivity, which generate a

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returns confounds public policy approaches to child development. Since different types of payoffs from child welfare are hard to separate, it is not easy to design policies that produce public benefit without generating significant "rents" for private gain. See Amy L. Wax, *Rearing the Next Generation: A View from the Economics of Public Finance* (unpublished manuscript, on file with author).

<sup>14</sup> See George, *supra* note 13 (just because children are consumer durables does not mean they cannot be productive capital assets as well).

<sup>15</sup> See BURGGRAF, *supra* note 1, at 51-66.

<sup>16</sup> See *id.* at 54-66.

base for taxation to support the payment of benefits to the parents' generation. But those offspring were produced through the investments of individual parents in the recipient group. The rub is that some of the beneficiaries invested more than others, but entitlement to returns is tied to work record rather than investment. People who never had children, or whose children are not productive, can count on the collective support of other people's offspring. This amounts to a subsidy flowing from parents, and especially "good" parents, to nonparents, or "bad" parents, within the same age cohort.<sup>17</sup> According to Burggraf, this structure creates a clear disincentive to good parenting on the part of beneficiaries of an old-age pension system.

Burggraf does distinguish between two potential structural effects of an old-age pension program. First, it might have antinatalist effects by discouraging people from bearing children at all or inducing them to have fewer. The simple prediction is that Social Security will depress fertility by enhancing the potential to free ride on others' reproductive efforts. Nevertheless, the magnitude of this effect would almost certainly depend on particular social, cultural, and historical conditions such as the ability to control fertility and the acceptance of childbearing as a choice. It has been suggested that the structure of the pension system may not significantly influence birth rates in western industrial societies because fertility rates have already bottomed out for other reasons.<sup>18</sup> If this suggestion is correct, then perhaps Burggraf is right to devote little attention to anti-natalist effects.<sup>19</sup> If it is wrong—that is, if the old-age system does have a significant negative effect on fertility rates—then that consequence is something to be reckoned with, since it will only exaggerate the trend towards the production of fewer future workers to support a large aging population, which is a formula for the system's eventual collapse.

On the first point, Burggraf's consistent emphasis on the productive value of children will strike many as presenting a distorted picture of the wellsprings of ordinary people's decisions to bear and rear children. Burggraf acknowledges that parents' intrinsic and vicarious interest in their children's well-being, represented in the economics lexicon as parents' consumption value, will provide an important brake on wholesale parental shirking. But her schema makes little sense unless investment

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17 See *id.* at 95-98.

18 There is some support for the conclusion that Social Security has minimal anti-natalist effects in highly developed industrial societies that have undergone a drastic demographic transition. See, e.g., Isaac Erlich & Francis T. Liu, *Social Security, The Family, and Economic Growth*, 36 ECON. INQUIRY 390, 404 (1998) (stating the expectation of "little adverse effects [of socialized old-age pension schemes] on fertility or even savings at an advanced stage of development . . . where fertility is quite low, so the main effect then would be on human capital accumulation and growth").

19 See BURGGRAF, *supra* note 1, at 73-74 (speculating that the population effects would be rather small).

value tends to swamp consumption value in parents' reproductive calculus. Only then can an intervention designed to increase returns on the investment component of childrearing be expected to make a significant difference to behavior. Whether Burggraf's critical assumption holds, however, is anyone's guess. Burggraf's assessment of the balance of consumption and concrete investment returns seems to rest primarily on history and past social practice rather than on current social reality or empirical social science data. Before the creation of modern, centralized, mandatory pension programs, children were regarded as parents' major source of old-age security.<sup>20</sup> Burggraf reasons backwards that, because such security was of great value to parents, the fear of being left without children's support in old age must have strongly motivated parental investment in children.<sup>21</sup> But this reasoning fails to satisfy, and we are still left wondering whether consumption or investment concerns (or perhaps something else entirely) loom largest in most parents' motivational structure, whether now or in the past. Even if parents used to depend on their children routinely for old-age security and support, the role of that dependence in setting parental levels of investment might still have been negligible for any number of reasons. Perhaps parents in the past were more skeptical about the existence of any important cause and effect relationship between parental investment choices and children's willingness or ability to support them in old age. Alternatively, parental conduct may have been determined by conventions, understandings, or individual parental characteristics that in most instances resisted important individual variation due to narrowly self-seeking motives.

Cultural and historical evidence suggests that, at least under some circumstances, intergenerational expectations can significantly influence parental conduct. For example, there appears to be a connection in some societies—China and India come to mind—between the value placed on male offspring and sons' responsibility for their parents in old age. Although these observations provide cautious support for the view that relieving aging parents of reliance on their own children might potentially cause parents to neglect them, much more is needed to show whether, and to what extent, eliminating socialized old age support would alter parents' behavioral choices in modern Western societies today. In particular, it must not be forgotten that myriad alternative options for investing against future destitution and bad luck are available to ordinary citizens in the industrial west—options that are often out of reach in societies whose

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20 See MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* 244 (1996) (recounting statistics suggesting that, prior to the enactment of the Social Security Act, a majority of the elderly depended on relatives and friends for support).

21 See BURGGRAB, *supra* note 1, at 65-66.

customs are adduced to support the link between old age security and parental indulgence. Throwing parents back on the tender mercies of their adult children in societies with advanced financial markets might have the perverse effect of deflecting resources *away* from childrearing towards other sources of security.

Considerations of timing alone raise doubts about Burggraf's suggestion that the Social Security program has depressed parental investment in children, confounding the notion that the old-age pension structure significantly affects parental investment patterns. Although Social Security has been around since the 1930s, most of the rather cursory evidence of declining child well-being that Burggraf musters for the proposition that familial investment in children has fallen below desirable levels long postdates the creation of the Social Security program. Burggraf must explain why the effects that she attributes to the perverse behavioral incentives of a mandatory old-age benefit system have only recently been felt.<sup>22</sup>

A second defect in the book's approach lies in Burggraf's failure to distinguish consistently between different kinds of investment in children. At some points she appears to focus quite narrowly on hands-on, direct caretaking or "time with children," and even more specifically on *parental* or *maternal* time with children. At others, she includes those items of value (i.e., private schooling or access to good public schools, private lessons, travel, safe neighborhoods, paid childcare services) that depend largely on family, community, or government expenditures. Although Burggraf does discuss public investment in children, such as spending on education,<sup>23</sup> on balance she tends to stress private, nongovernmental inputs. But her private world of childrearing is curiously impoverished: she tends to give short shrift to the nonparental or nonfamilial forms of attention—from relatives, neighbors, community leaders, and religious figures—and the structures that support the generous, routine provision of such attention, which may well be quite crucial to childrens' development. In any event, is unclear from her discussion whether she believes that the most critical shortfall lies in the provision of hands-on parental caretaking, in the falloff in other forms of private investment, or in a decline in government spending. And she provides little information from which to determine where additional inputs should be concentrated and what mix of investments would be best. Finally, as a result of her confusion about what she means by investments in children, she does not carefully enough unpack the myriad factors—political, economic, cultural, and psychological—that differentially determine the amount and quality of

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22 See BURGGRAF, *supra* note 1, at 212-13.

23 See *id* at 102.

investments in children over the broad public-private spectrum.

Burggraf devotes a good portion of the book to a feminist *cri de coeur* against what she claims is a longstanding disdain for and undervaluation of traditional, feminine caretaking work, and she offers some theories as to why that role has not been valued at its true worth.<sup>24</sup> Her extended discussion of the history and ideology of women's work reinforces the reader's sense that her main preoccupation is with a supposed underprovision of direct parental attention to children and perhaps even more narrowly with a dearth of *maternal* care. Burggraf appears to believe that her commitment to enhancing maternal time with children leads to the conclusion that Social Security must be reformed along the lines she proposes. The discussion below suggests why that conclusion does not follow from her premises. But even apart from that defect in her logic, Burggraf's stress on maternal care for children distorts her attempt to figure out what is happening to child well-being overall. Although unquestionably of great importance, traditional mothering is but one form of *familial* investment in children. Much evidence suggests that more general paternal attention, or at least paternal presence, is also important.<sup>25</sup> Moreover, direct care is only one kind of parental resource. Families have always made significant financial investments in children in the form of things money can buy, and those have traditionally had little to do with the mother's role precisely because mothers historically earned very little. That portion of parental investment can be traced to resources coming from the breadwinner (usually the father) and to decisions, in which fathers presumably participate, about how much money to spend on children. But those decisions have little to do, at least directly, with the peculiarities of the economy's treatment of or attitudes towards women's work. If families are spending too little money on their children, or are misdirecting the resources they have, the explanations for that behavior may differ from the reasons for any supposed undersupply of maternal care. For example, in order to spend the money of a breadwinner, there needs to be a breadwinner on the premises. Burggraf does give some attention to family breakdown and paternal absence as one culprit in a decline in investments in children.<sup>26</sup> But the potentially great importance of paternal inputs in the form of time, money, and family stability suggests that the structural undervaluation of *women's* efforts, contrary to Burggraf's implication, may be only a small part of the story she seeks to

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24 See *id.* at 15-35.

25 Indeed, Burggraf herself appears to acknowledge the problem of the lack of paternal care. Cf. *id.* at 7 (citing former Vice President Dan Quayle's speech criticizing the television show *Murphy Brown's* glorification of single motherhood, and acknowledging that many share his concerns); *id.* at 109-44 (offering proposals to strengthen the institution of marriage).

26 See *id.* at 109-44.



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The lack of a theory of the relative importance of different forms of inputs into child well-being connects with the third defect in Burggraf's discussion: her failure to define the conditions that establish a baseline of optimal investments in children. Any claim of an undesirable shortfall depends on comparing the existing supply to an ideal level of investment in children generally and parental caretaking services in particular. But how do we know what the right amount would be? This question lurks in the background of Burggraf's discussion but does not receive a satisfying or systematic analysis. Because Burggraf never identifies the prerequisites to the optimal supply of resources to children, she is in danger of going astray in her analysis of how to arrange private and public life to insure that support will be forthcoming from the right quarters.

On standard economic accounts, an optimal level of supply of a good or service is the level that would result from the intersection of supply and demand in a perfectly competitive market. That market will ideally produce an outcome that maximizes social utility. Burggraf should recognize that any attempt to identify the optimal level of supply of any good or service—or any deviation from that level—creates a stark choice: either an unregulated market will provide the efficient amount of services, or the market will fail to do so for reasons of market failure, in which case a regulatory intervention or “fix” may be necessary. Rephrasing this question with respect to Burggraf's scheme, the alternatives are: either the free market produces the optimal level of childrearing or it does not.

Burggraf is fundamentally confused about the strengths and shortcomings of markets in producing a desirable level of parental investment within society as a whole. Burggraf implies that insufficient attention to children's needs is the product of a Social Security system that separates the costs and benefits of childrearing as it operates in combination with a background market distortion in the form of a culturally mandated undervaluation of women's efforts. But that picture sits uneasily with her insistence that the crisis of parental investment has worsened recently, because the customary undervaluation of women's work is, if anything, under greater disciplinary pressure from competitive market forces now than ever before. Her diagnosis is also inconsistent with her own discussion of broader social and economic developments. Thus, she stresses the dramatic rise in the costs of raising and educating children.<sup>27</sup> And she recognizes that skyrocketing costs can be traced in large part to the growing opportunity costs of childrearing, which have almost everything to do with women's changing roles and brighter

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27 See *id.* at 162-68.

prospects in the workplace.<sup>28</sup> To the extent that Burggraf's analysis rests on an understanding that these developments exaggerate the disparity between parental investments and payoffs by increasing the costs of *inputs*, it is at odds with her diagnosis of our dilemma as traceable to a central defect in the existing Social Security system, which is that it depresses parental *returns*.

Indeed, the historical and social developments Burggraf documents before proceeding to her reform proposal are largely independent of the pension system, and would continue unabated even if Social Security were altered or abolished. Burggraf's story is also inconsistent with her emphasis on attaching a higher value to women's work. The labor market developments she describes are associated with more rather than less transactional freedom, which can be expected to produce an economically more rational pricing of women's labor. The move towards a free market in women's labor is fundamentally inconsistent with a culturally conditioned or customary understatement of its value. Yet Burggraf cannot have it both ways. She cannot blame the neglect of children on the legacy of the "gender cartel" that fails to reward women's labor at its true worth, while at the same time tracing this development back to women's progress on the labor market, which involves the dissolution of that cartel.

In the same vein, Burggraf also takes note of the evolution of sexual mores and the loosening of marital ties. She fails to see that changes in sexual norms generate a significant opportunity cost of their own, analogous to that created by women's expanding options in the workplace. Just as broader marketplace opportunities for women can be viewed as raising the effective price of traditional time-intensive caretaking, loosening sexual mores can be viewed as expanding sexual opportunities for both parents, but especially for men. This raises the effective pricetag on paternal long-term devotion to children and thus makes paternal presence and breadwinner investments more costly.

Although Burggraf recognizes these trends and discerns some of their implications, she fails fully to comprehend that the social dynamic that results from women's greater participation in paid work and from evolving sexual norms implies a conclusion that undermines her focus on Social Security reform. Specifically, the transition towards a less regulated market both in labor and sexual alliances may itself be responsible for a sequence of events that generates less than optimal investment in children.

How exactly would the transition to more transactional freedom in occupational and sexual choice produce the dislocations Burggraf claims? One possibility is to admit that children's well-being has indeed declined, but to assert that countervailing gains in other quarters have arguably

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28 See *id.* at 21-22.

produced an increase in net social welfare overall. Greater occupational freedom for women, for example, would create new opportunities for utility-enhancing transactions on the labor market, which were effectively blocked prior to the feminist revolution.<sup>29</sup> Absent a complicated story, implicating collective effects, to show why such changes might move society to a less favorable equilibrium, the utility generated through more spontaneous voluntary exchange would be expected to increase social welfare. Greater sexual freedom might also spell more personal happiness, with a similar effect. The idea that such tradeoffs might actually occur is discomfiting for a number of reasons. First, the suggestion is doubly problematic in expressly inviting interpersonal comparisons of utility on sharply different measures of personal and social welfare and in employing elements of well-being that are especially difficult to quantify. Second, the candid identification of winners and losers rests on the notion that children's well-being might be in significant tension with that of adults and even of women—a notion frequently resisted because of the hard, value-laden choices it demands.

It is possible that changes in recent years have produced the best of all possible worlds; however, it is also possible that gains have not been sufficiently large to offset the effects of any putative falloffs in the level of resources channeled to children under the old social strictures. If so, that invites an analysis of why social arrangements have evolved to provide neither for greater well-being for children nor greater social happiness overall. As the discussion below explains more fully, one possibility is that the labor market and socio-sexual changes associated with greater freedom of choice do not, despite appearances, represent a move to more efficient markets, but rather towards a form of market failure that reduces social well-being in the aggregate. If that is the case, then the Social Security system may have less to do with our current predicament than Burggraf suggests, and her proposal for revamping that system less to do with the solution than she might hope.

## II. An Undersupply of Parental Care—What Is the Explanation?

Burggraf's work attempts to connect two complicated social phenomena: first, that parents frequently do not receive a fair return on their investment in their children;<sup>30</sup> and second, that "women's work" in the home has historically been undercompensated and undervalued.<sup>31</sup> In

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29 For a discussion of this and other themes concerning women in the workplace, see generally Amy L. Wax, *Caring Enough: Sex Roles, Work, and Taxing Women*, 44 VILL. L. REV. (forthcoming 1999).

30 See BURGGRAF, *supra* note 1, at 94-98.

31 See *id.* at 43-50.

focusing on parents' inadequate returns, she must answer the question of who is receiving the lion's share of the returns. Her background account should lead to the conclusion that childrearing potentially generates important baseline public goods and positive externalities,<sup>32</sup> wholly apart from and prior to any governmentally mandated system of old-age support. Yet Burggraf never expressly confronts this possibility, choosing instead to emphasize the positive externalities generated by the old-age pension system.

Burggraf's failure to link her observations about inadequate parental returns on investment to a larger theory of how market forces operate in the spheres relevant to childrearing investments leads her to look in the wrong places for explanations of why women's traditional activities have historically been undercompensated and denigrated. At times, she appears to blame ideology, arguing that those in power, including theorists of various stripes and self-interested males in general, have persuaded themselves that women's work is not worth much.<sup>33</sup> At other times, she blames the fact that most women's work is performed within families, in an off-market, unpriced setting. Because there is no real market for these vital services, she suggests, it is easy for societies to discount them, thereby fueling social and political theories that take women's work for granted or leave it out of the picture entirely.<sup>34</sup> Yet neither of these stories quite hangs together. As the following discussion suggests, there is an alternative account that offers a better explanation for Burggraf's picture of social reality. Unfortunately, that account also leads to the conclusion that Burggraf's proposed solutions—and her Social Security reform scheme in particular—will do little to correct the trends that she finds most troubling.

#### A. *Free Markets in Women's Labor and Externalities of Childrearing*

Time spent caring for children cannot be spent earning money or consuming leisure activities. This much has always been true. Within the past thirty years or so, however, women have enjoyed a dramatically broader range of lucrative opportunities on the labor market. The causes of this expansion are unimportant for our purposes. The point is that large

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32 Burggraf associates the idea of children as public goods with Nancy Folbre. *See id.* at 83-85. She nonetheless curiously dismisses public policy recommendations based on Folbre's model as impractical and thus not worthy of weighty consideration. She also seems to confuse the notion that efficient allocation requires that childrearing costs be socialized (i.e., borne by the members of the public who enjoy the benefits) with proposals to transfer direct childrearing work out of private hands. *See id.* at 84-85. But the first idea, which entails only some form of public subsidy or support, does not necessarily entail the other, which goes to the organization of caregiving.

33 *See id.* at 39-41, 182-83.

34 *See id.* at 188-90.

numbers of women have for the first time been permitted to engage in activities and to occupy social roles formerly reserved for men.<sup>35</sup>

These changes were made possible and considerably hastened by the creation of modern labor markets. According to the neoclassical account, returns to labor are in large part determined by supply and demand.<sup>36</sup> A given quantity of labor is rewarded at a particular price or wage that reflects its economic value. The economic value reflects demand on the market as well as labor productivity, which is a function of ability, industry, and training. Until recently, the market for men's labor, although always far from perfectly competitive, was considerably more "free" and rational (that is, responsive to workers' actual economic productivity) than the market for women's work. Indeed, until very recently no society has seen fit to release women onto the labor market to compete alongside men by selling their labor to the highest bidder on approximately equal terms. Rather, equal employment opportunity by sex was rejected, in theory and practice, by virtually every society worldwide.

Various formal and informal strategies were traditionally employed to limit women's labor market currency.<sup>37</sup> In this century at least, informal customs or norms surely have been more important than law as the source of restrictions on the labor market choices of women. Burggraf accurately calls these restrictions a "caste system."<sup>38</sup> The disapproval that label implies, however, blinds Burggraf to the functions performed by social norms in general and the norms and practices that comprise the gender caste system in particular. Traditional gender role norms are a comprehensive system of social regulation designed to restrict the transactions into which individuals might otherwise freely enter if motivated purely by self-interest.<sup>39</sup> Burggraf never stops to consider the dynamic behind the nearly universal phenomenon of distinct gender roles. Why have societies worldwide and throughout history adopted a set of

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35 I develop the ideas in this section in greater detail in Wax, *supra* note 31.

36 See, e.g., Gillian Lester, *Careers and Contingency*, 51 STAN. L. REV. 73, 91-93, 131-38 (1998) (describing neoclassical labor market models and critiques of those models).

37 See, e.g., SUSAN PEDERSEN, *FAMILY DEPENDENCE AND THE ORIGINS OF THE WELFARE STATE: BRITAIN AND FRANCE 1914-1945* (1993) (offering a historical perspective); Mary Anne Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Male in the Law and Feminist Jurisprudence*, 105 YALE L.J. 1 (1995) (discussing sex role conventions). In modern times, the most important devices have been informal customs that either make some work unavailable to women or make performing it less economically rewarding for them. It was simply understood that some jobs belonged to or suited men, and that women should not be hired to perform them. Men would not permit their wives to work after marriage; to have a working wife was considered a source of shame. For a man to work under a female boss was considered unthinkable degrading. Women were routinely paid less than men for the same work. All these conventions were widely accepted and rarely questioned or defied. See generally Wax, *supra* note 31; Wax, *supra* note 13.

38 See BURGGRAF, *supra* note 1, at 3-4.

39 For a more extended discussion, see Wax, *supra* note 31; Wax, *supra* note 13. On norms generally, see Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338 (1992).

social mores and customs that reject a laissez faire approach to women's productive efforts and tightly restrict the sphere of women's legitimate social activities? Why have societies also uniformly frowned on the very notion of a free market in women's work?

One answer is presented by the defects that economists have identified as commonly accepted sources of market failure. Among the traditionally recognized conditions for market failure are the creation of public goods and the generation of positive or negative externalities.<sup>40</sup> Thus, if Burggraf is right that there is currently a suboptimal underprovision of hands-on parenting, then a theory of positive externalities and public goods may explain it.

It is commonly accepted that imperfectly competitive markets can result when activities generate negative externalities.<sup>41</sup> If services traditionally supplied by women, most notably the direct care of children, tend to generate significant positive externalities, one would expect these services to be undersupplied in an otherwise unregulated market for women's labor. Specifically, externalities might systematically distort the demand for women's labor on the paid market and at home and alter the balance between the two sectors. This shift rather idealistically assumes that women's labor on the paid market is priced at its full value; that there are no other factors such as discrimination or market norms distorting the market price.<sup>42</sup> The uncompensated benefit from nurturing work would

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40 See *infra* note 24.

41 See, e.g., FRANCISCO CABRILLO, *THE ECONOMICS OF THE FAMILY AND FAMILY POLICY* 146-54 (1999); DENNIS C. MUELLER, *PUBLIC CHOICE* II 25-28 (1990); NERLOVE, ET AL., *supra* note 13, at 37-43. Public finance theory predicts that, when investments or transactions create negative externalities, that is, when they impose costs on third parties, the market will generate too much of a commodity or service at the price fixed by the market. Only if the true costs of the activity are internalized to the transaction will the parties generate the optimal amount. Likewise, when an activity generates positive externalities, that is, when it creates benefits for strangers to the transaction or otherwise impedes fair compensation for the producer, the market will generate too little of the commodity or service. Specifically, the theory predicts that productive labor that creates positive externalities will be undersupplied relative to some socially optimal output. In more practical terms, workers whose labor generates positive externalities will tend to reduce their amount of effort because the returns they enjoy will fail to reflect the full measure of its social value. People other than the supplier will obtain some of those benefits gratuitously—they will free ride on the transaction. The returns to the worker will be artificially depressed relative to what a perfectly competitive market would generate.

42 This account is not meant to rule out additional forces that might lower returns to women's work within the domestic sphere. The dynamics of bargaining between couples within the marital relationship, which can be modeled as a bilateral monopoly, can affect women's returns on investments within the family and could potentially compound (or compensate for) the shortfall in returns created by the interplay of the domestic and paid work sphere. There is reason to believe, however, that marriage introduces severe impediments on women's ability to receive a fair return on their labor outside the paid workplace and thus may reduce the rewards of domestic activity even further in many cases. See Amy L. Wax, *Bargaining in the Shadow of the Market: Is There a Future for Egalitarian Marriage?*, 84 VA. L. REV. 509 (1998). The difficulty of predicting the outcomes of the dynamics of intrafamilial allocations adds complexity to the interplay between the marital unit and external markets for labor and confounds any attempt to analyze tradeoffs between parenting time and

then artificially depress effective demand for those services relative to the equilibrium demand for other uses of women's time. The reduction in effective demand for caring work would diminish the rewards to those performing such tasks and hence depress the supply of those willing to perform the services. This would shift the overall balance of effort away from nurturing. If women get significantly more accurate returns on investment in the paid labor market, participation in the domestic sphere will decline.

A number of theorists have suggested that unpaid, off-market childrearing work potentially creates positive externalities of various kinds.<sup>43</sup> It is quite difficult to determine the exact nature of these benefits and whether the magnitude of these externalities is significant enough to influence behavior.<sup>44</sup> Nonetheless, two basic intuitions support the conclusion that childrearing produces important generalized social benefits. First, the continued existence of society in any form requires that some number of children be born and raised to maturity. Although many complex factors, perhaps including the structure of any old-age pension program, might affect *how many* children a given society would be best off producing, there is no question that everyone gains if *some* people take on the parental role. Second, society as a whole is better off if children who are born grow up to be industrious, law abiding, sober, moral, mentally and physically healthy, conscientious, creative, educated, and skilled citizens. Assuming for the sake of argument that the resources that parents invest in childrearing have some important relationship to how children turn out, then there is collective interest in the incentives parents face for good or ill in the performance of their childrearing duties.

Yet another type of externality generated by childrearing potentially shifts the allocation of parents' resources in general and the allocation of women's labor in particular. The human capital generated by parental investment redounds not only to the collective benefit of society as a whole but also to the benefit of the individual children. Although parents have a considerable interest in their children's well-being—as represented by parental “consumption value”—there is still less than a complete identity of interests. If some resources conferred on children by parents are pure gift because parents receive no compensation in the form of consumption value or otherwise, economic theory predicts that those resources will be underprovided relative to some optimal amount.

My immediate concern is not to speculate on how to solve the

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time devoted to paid work.

43 See, e.g., CABRILLO, *supra* note 43; NERLOVE, *supra* note 13; ERIC RAKOWSKI, EQUAL JUSTICE 149-55 (1991); SCHULZ, *supra* note 12; Shirley P. Burggraf, *How Should the Costs of Child Rearing Be Distributed?*, CHALLENGE, Sept.-Oct. 1993, at 48-55; George, *supra* note 13.

44 For more on this topic, see Wax, *supra* note 13.

problems of positive externalities and market failure that potentially deform the supply of good care for children. Rather, it is to posit a relationship between these imperfections and the devices that societies have historically evolved to deal with them. As noted, the theory of externalities predicts that hands-on nurturing of children will be undersupplied relative to some socially optimal level. But that undersupply will only occur in a market that, apart from the noted defects, is otherwise economically competitive, permitting women's labor on behalf of children to compete without interference with other valuable uses of women's time, including most notably paid market work. But one way to deal with undersupply is to reduce the level of competition for women's time and effort by reducing the returns to alternative allocations of labor.<sup>45</sup> The types of devices societies have employed to accomplish this result have been rehearsed elsewhere. The effect of these devices will be to depress the demand for women's paid labor overall, thus lowering the price, or wage, on women's labor performed for pay, which depresses returns to women workers from market work. If compensation from paid work is artificially reduced, women will supply less of it relative to the alternatives, which include domestic activities.

If this story is accepted, the gender caste system that Burggraf deplores should be seen in a different light. The customs and practices regulating sex roles should be viewed as a concerted response to the market failure that results from the positive externalities of caring for children. Although a free market for women's labor would appear to be efficient, that appearance is fundamentally mistaken. Uncompensated benefits to third parties potentially interfere with efficient allocations of labor on an unregulated market.

This is not to say that there are no possible alternative accounts of how women have found themselves providing valuable services for inadequate compensation or without monetary compensation of any kind. One explanation is a variation on pure rent-seeking. Men have banded together to use collective force to extract value from women on behalf of themselves and children, but not necessarily within an arrangement that is socially efficient. But why would societies that indulge such inefficiencies survive and thrive? Alternatively, specialization creates compensating advantages that might be efficient.<sup>46</sup> But then why haven't societies simply

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45 See Wax, *supra* note 31. For example, societies develop "dual labor markets" in which women are artificially confined, by custom and practice, to a limited number of occupations; ordain price discrimination in the form of lower wages for women, regardless of productivity; create a marriage bar, which drastically raises the price (forgoing marriage) of staying in the paid labor market; and create a taboo that views a working wife as a badge of shame. For a more extensive discussion of gender role norms, see *id.*

46 See Gary S. Becker, *Human Capital, Effort, and the Sexual Division of Labor*, 3 J. LAB. ECON. S33-S58 (1985).



chosen to bribe women to adopt roles that lead to the most socially efficient result, rather than restricting the choices they are permitted to make, thus incurring the costs of blocking voluntary utility-enhancing transactions?<sup>47</sup> The final alternative looks to externalities. Restrictive gender customs serve to shift incentives to correct for spontaneous undersupply. Thus, what some have suspected all along is confirmed: societies have devised ways to force women to sacrifice for the greater good.<sup>48</sup> Although the externalities of parenting and childrearing are elusive and difficult to measure, this story has the virtue of explaining the universality, perdurability, and remarkable stability of gender role restrictions.<sup>49</sup>

In sum, what Burggraf misses is the possibility that the gender caste system she criticizes is not the source of the undercompensation of caring work, but rather has evolved as a response to it. She blames the domestic confinement of women under a gender caste system for undervaluing traditional nurturing activities: If only women's services were fully priced, women would be paid what they are worth and the undersupply problem would disappear. But a moment's reflection shows what is wrong with that story: Giving women fewer alternatives would be expected to increase the supply of nurturing services, not decrease it, by lowering the opportunity cost of engaging in those activities and by decreasing the rewards of alternative efforts. The market is the source, not the solution, for the undervaluation and underprovision of childrearing. And the ideology of the gender caste system merely reflects and rationalizes the market failures that make it necessary.

B. *Will a Parental Dividend Solve Undersupply?*

The question of whether an adequate supply of parental time with children would be realized under the baseline conditions of a free, gender-blind market for wage labor is of vital importance in evaluating Burggraf's proposal for Social Security reform. Although Burggraf is concerned with the full range of parental investments in children, she clearly views direct parental care as a key guarantor of children's healthy and productive futures. But Burggraf's parental dividend program will make a significant

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47 For a discussion of these alternatives, see Wax, *supra* note 31.

48 To a lesser extent, men (in their role as fathers) have been forced to sacrifice as well. A parallel story could be told about the benefits extracted from men in favor of children and society by customs restricting men's marital choices and sexual freedom. Those mores have proven as universal, stable, and perdurable as gender restrictions.

49 It does not begin to explain, however, how such gender role conventions actually came to be developed and adopted—that is, it explains their rationale but not the steps in their genesis. For a general discussion of the origin of norms (and gender role norms in particular), see McAdams, *supra* note 41, at 379 & n.141.

difference in the supply of the parental services she deems vital only if Social Security is responsible for a significant portion of the downward pressure on those efforts. Even if Social Security were abolished altogether and the externalized component of support for childless contemporaries disappeared, it would not follow that more mothers would stay home or that parents would cut back their hours at work. Declaring a parental dividend, although it may return some resources to parents, does nothing to address the principal sources of the rising opportunity costs of bearing and raising children. Likewise, that reform will not bring back the social and sexual norms concerning divorce, adultery, premarital cohabitation, and serial monogamy that served as important bulwarks against the erosion of continuing paternal investment in children by stabilizing two-parent families and by facilitating the division of labor that permitted women to devote time to caretaking.<sup>50</sup> Even if Social Security may slightly exacerbate the shortages that the liberalization of norms has caused, reforming that system as Burggraf suggests will neither reverse these developments nor address their root causes. Indeed, Burggraf's conclusion that the exploding opportunity cost of childrearing has exacerbated a crisis that can be laid at the feet of a perverse old-age pension system almost certainly gets the relationship backwards. The old-age pension system has come to function as the principal backstop against a shortage in parental investment that can be traced back to the social changes associated with the triumph of feminism and the sexual revolution. Although the economic developments that have resulted in the liberation of women have unleashed the very changes, including most notably demographic implosion in advanced industrial countries, that have threatened the Social Security system with collapse,<sup>51</sup> those forces are the outgrowth neither of that program's creation nor of its peculiar design. It follows that Social Security reform cannot plausibly function as the principal agent of restoring the family to its prior place of cultural and social primacy or of elevating children's level of well-being to some better or higher level that presumably prevailed in the past.

The cogency of Burggraf's particular proposal is especially doubtful because its sole focus is on the privatization of returns, rather than the socialization of costs. It thus addresses itself to, at best, half of the problem. The potentially troublesome and market-failure-inducing

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50 Burggraf does discuss divorce reform as one component of a comprehensive program to stabilize the family. See BURGGRAF, *supra* note 1, at 109-44. For example, she suggests including earning capacity in the marital property that is divided between spouses upon the dissolution of marriage. See *id.* at 136. Her discussion of family stability, however, includes a very heavy emphasis on changing the way in which family resources are allocated for old-age support. See *id.* at 138-39.

51 See generally PETER G. PETERSON, WILL AMERICAN GROW UP BEFORE IT GROWS OLD? HOW THE COMING SOCIAL SECURITY CRISIS THREATENS YOU, YOUR FAMILY, AND YOUR COUNTRY (1996).

externalities from hands-on caring work and other forms of onerous parental investment fall into two distinct categories: the purely altruistic benefits to children for which parents, by definition, receive no recompense; and the dispersed and generalized social benefits from the rearing of industrious, upstanding citizens, which take the form mainly (although not solely) of public goods. The proper corrective for each type of potentially market-distorting externality is not the same. Burggraf's solution to both problems is, in effect, to accomplish the privatization of old-age security<sup>52</sup> by closing the circle of family interdependence that is breached by the structural barriers that impede efficient, spontaneous transactions between contiguous generations. Burggraf suggests that if parents are forced to look to their own children as a hedge against destitution and abandonment, they will have an important incentive to invest wisely in their children's upbringing.<sup>53</sup> In effect, the benefits externalized to children will be internalized to the investor. But that effect addresses only that portion of the undersupply and undercompensation problem that can be traced to uncompensated gifts to the next generation. (And the parental dividend is a far from perfect solution even to that aspect of the problem.<sup>54</sup>) It does not touch the socialized portion of the undersupply, which may be built into the very nature of the childrearing function itself. Although the parental dividend will produce a larger payback from benefits flowing to individual parents' own children, some portion of uncompensated benefits will still go to society as a whole. The conditions for a free ride on a public good will still persist.

In sum, the skyrocketing opportunity cost of having and supporting children that has followed the collapse of the gender caste system is the prime suspect in any attempt to explain a decline in investments in the next generation. Those shifts in norms and social practices have had their main impact on the reproductive choices and attitudes of women. Added to that are the loosening restrictions on sexual adventurism, divorce, and serial monogamy—developments which have greatly increased the opportunity costs of hewing to the stable arrangements that arguably provide the best

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52 There has been much talk of various proposals to privatize Social Security. The essence of most privatization proposals is a plan to substitute investments in private capital markets (specifically, the stock market) for the maintenance by the government of a pool of funds for payment of liabilities incurred under the terms of the program. Under some proposals, the government would manage the private investment of an aggregative fund into which beneficiaries would pay a mandated amount. See Peter Diamond, *Sound Investment*, NEW REPUBLIC, Nov. 9, 1998, at 18. Other proposals contain an additional element of privatization, in that each recipient would be permitted to maintain a personal fund, which he or she would manage under loose regulatory guidelines. The latter programs effectively abolish the progressively redistributive element currently built into the program, and undermine the element of insurance against individualized risk of bad investments that is inherent in the pooled management of funds. See Jonathan Chait, *Security Risk*, NEW REPUBLIC, Jan. 18, 1999, at 20.

53 See BURGGRAF, *supra* note 1, at 69-85.

54 See *infra* Part IV.

setting for bringing up children and producing lots of them. Whether the behavioral shifts induced by these phenomena swamp those created by Social Security's guarantee of freedom from an insecure old age is ultimately an empirical question. But if the effects of the collapse of the sexual and labor market cartels are greater than the effects of the modern erosion of the intergenerational compact—which they almost certainly are—then moving to a parental dividend will not change the level of parental investment very much.

### III. Indulging the Nurture Assumption

As noted above, Burggraf's parental dividend proposal falls short by failing adequately to address the component of external benefit from childrearing that is broadly socialized—a component that is difficult to quantify but that evidence suggests may be substantial. At best, her proposal is designed to address the effects of benefits conferred on the particular children who have received parental care. But even as an attempt to internalize the externality traceable to uncompensated parental gifts, the proposal is seriously flawed. Despite our commonsense notions about the relationship between good parenting and positive outcomes for children, it is difficult to identify and measure the benefits or payoffs of all forms of parental investments in children, including direct parental care, because the causal links are not well established. The proposition that there is some regular correspondence between the inputs and outputs of childrearing has tremendous appeal and is almost certainly true at the extremes, but demonstrating the importance of small shifts in the quantity and quality of parental investment or behavior over most of the range ordinarily found within modern industrial societies is quite problematic. Even more difficult is the task of demonstrating a correlation between socially significant differences in outcomes and the amount of direct parental care as compared to care by paid surrogates.<sup>55</sup> Thus, gender role norms that force or encourage mothers to care for their own offspring may not be necessary to provide for the optimal care of children. If paid caretakers could potentially do just as well, attention should shift away from strategies for luring women back into the home and towards trying to alter daycare purchase decisions or to improve the quality of paid childcare.<sup>56</sup>

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55 See, e.g., Michael Lamb, *Nonparental Child Care: Context, Quality, Correlates, and Consequences*, in 4 HANDBOOK OF CHILD PSYCHOLOGY: CHILD PSYCHOLOGY IN PRACTICE (William Damon et al. eds., 1997) (discussing equivocal social science evidence on the effects of nonparental childcare and paid childcare services); SUSAN CHIRA, *A MOTHER'S PLACE: CHOOSING WORK AND FAMILY WITHOUT GUILT OR BLAME* (1999) (citing Michael Lamb and discussing the effects of childcare).

56 See, e.g., Alison Blau & David Hagy, *The Demand for Quality in Child Care*, 106 J. POL. ECON. 104 (1998) (suggesting that parents are not very interested in trading up to more expensive childcare). That is not to say that the potential equivalence of paid and parental care for many of a child's waking hours necessarily makes the potential problem of inadequate parental investment in

Burggraf's discussion of the caring crisis and her proposal for creation of a parental dividend, rests on a fundamental premise about the role of parents in their children's lives. If the premise is invalid, her argument loses much of its cogency and force. The mere content of Burggraf's proposal makes clear that she adopts some version of what psychologist Judith Harris has recently called the "nurture assumption": because parents provide the environment in which children grow up, parents have "a real power over the sort of people their children will turn out to be."<sup>57</sup>

The nurture assumption can be unpacked into a sequence of understandings about child development, the role of parents, and the efficacy of public policy in influencing outcomes for children. First, there exists a regular, systematic, and demonstrable causal relationship between the choices that parents make in rearing their children and how those children turn out as adults. It is therefore possible to develop something like a science of childrearing, which rests on the discovery of the rules linking parental conduct to results. That science can be harnessed to guide parental behavior. Second, the behavior of a child's individual parents is the most important factor in how that child develops. This is an assumption about the relative magnitude of effects, based on a belief that parents have a greater role in influencing a child's development than countless other factors, including what children watch on television; the mores of friends or peers; the presence, number, and character of siblings; the educational philosophy of the child's school; heredity; or even luck. Third, children's character, behavior, skills, personality, and ability are within parents' *deliberate* control. They are not simply a matter of fixed traits or background characteristics that parents bring to the childrearing role. Thus, parents can determine whether their children's future behavior will be socially desirable or undesirable, socially constructive or destructive. Fourth, because child development is a function of parents' chosen conduct, public policy can influence parental behavior to produce better outcomes for children by bringing to bear the right incentives and by providing parents with the proper resources.

The failure of any of these assumptions casts serious doubt on Burggraf's proposal and on any broader investment model that depends on the existence of a systematic and predictable causal relationship between parental investments and the development of children's human capital. Yet there is reason to question the tenets of this model. By claiming to show that the causal links between certain kinds of inputs and outputs in the childrearing game are not well established, the psychologist Judith Harris casts doubt on the conclusion that parents can control or minimize the risks

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children go away. Rather, it would only shift the debate to whether the supposed externalities of childrearing would lead wage earning parents to skimp on the quality of the childcare services that they purchase for their children.

57 JUDITH HARRIS, THE NURTURE ASSUMPTION 2 (1998).

of bad outcomes by adopting certain investment strategies.<sup>58</sup> Although there is a high degree of correlation between certain parental characteristics and children's traits and behavior, there is a remarkable paucity of data to distinguish between correlations due to fixed traits (such as heredity) or linked circumstances (such as intelligent peers and parental education), and the direct effects of parents' childrearing strategies. The principal factors that determine child outcomes are either unknown because we are as yet ignorant of the causal rules, or not under parents' control because independent of parents' deliberate childrearing choices. Burggraf's parental dividend scheme necessarily envisions parents making childrearing decisions that will result in monetary payoffs that are correlated systematically with the value of the resources expended. This will happen only if more or better parental investment tends to increase the value of the parental dividend fund, which in turn will occur only if certain conditions hold. First, proper parental inputs will tend to create more productive citizens. Those citizens will earn higher incomes and pay more money into parents' retirement accounts. Second, parents must know which kinds of investments produce this effect. They must believe, for example, that if they supervise their children more conscientiously, read to them, teach them, play with them, take them to museums and on camping trips, eschew long work hours and excessive careerism, banish selfishness, and renounce serial monogamy and sexual adventurism, their children will reward them with higher incomes in the future. Thus, parents must explicitly or implicitly embrace the "nature assumption." And that assumption must be correct.

Burggraf's behavioral predictions simply will not work if these conditions do not hold or if any of the effects are swamped by other factors. Even if there is a regular causal link between parental choices and child outcomes, the signal of the parental dividend must be large enough to rise above the noise of other elements, such as occupational or sexual opportunity costs, or the magnitude of parents' consumption value relative to investment value, that tend either to discourage or encourage investments in children. And a causal relationship, even if present, does not guarantee a large effect. The validity of the nurture assumption tells us nothing about the elasticity of the investment-output relationship. Massive increases in parental inputs may be necessary to produce rather small improvements in future productivity. For these reasons, the effective incentives the parental dividend creates for parents to improve the quality or quantity of investment may be marginal at best.

In sum, the fundamental problem with Burggraf's proposal is that there is remarkably little evidence that, above and beyond insuring that a minimum baseline of physical and emotional needs are met, parental choices lead in any demonstrable way to the production of better or worse

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58 See *id.*

children.<sup>59</sup> Moreover, economic success in the marketplace and the ability to demand high pay is hardly the only measure of a successful adult or child. An additional step is necessary to conclude that variations within the normal range of parental behavior will reliably result in higher earnings, as opposed to other outcomes that are socially valuable or desired by parents and children.

As an attempt to bring an economic paradigm to the childrearing function, the human capital investment framework is not necessarily a mistake. The model may lead us astray, however, by implying a degree of control and predictability that is belied by our poor understanding of the principals of child development and by the facts. That predictability is essential if Burggraf's parental dividend proposal is to have any chance of making a significant difference in the lives of children. For even if, as Burggraf predicts, parents really will invest more in children in anticipation of greater returns on their investment through the parental dividend device, that expectation will not be fulfilled unless parents' belief in the efficacy of their own enhanced contribution is grounded in reality.

#### IV. The Nurture Assumption and the Risks of Childrearing

Burggraf's parental dividend proposal implicitly assumes that childrearing can be made a low-risk undertaking by establishing a structure that requires children to support their own parents. But if childrearing is inherently a high-risk proposition, that assumption fails. Indeed, the foregoing discussion suggests that investments in children may be among the riskiest that a person can choose to make. There is no guarantee, despite best efforts, that children will turn out well rather than badly. They may grow up to be incompetent or ineffectual, or may die, fall sick, go insane, or run afoul of the law. Even if children are capable of supporting their elderly parents, they may refuse to do so out of ingratitude or cold-heartedness, or simply because they insist upon following a life plan (as a starving artist, perhaps) that is incompatible with providing much help. Attempts to solve this problem by contractual mechanisms face "first mover" problems and other structural impediments created by the time lag between investment and payoff and by contractual incapacity due to children's immaturity during the period when the most intensive parental investments must be made. Societies have attempted to cope with the risk of contractual failure through various informal mechanisms, including strong norms of filial duty and obligations of parental support in old age. However, those norms were never a perfect guarantee against bad luck and defiant ingratitude and have succumbed in part to modern conditions. Indeed, the rise of governmentally mandated old-age programs and their

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59 See *id.*, at 44.

ascendant political popularity almost certainly can be traced in part to the erosion of conventions that helped parents secure their children's future support.<sup>60</sup>

The notion that childrearing is a highly risky endeavor bears on why old-age insurance is considered so valuable and on whether Burggraf's proposal is a good substitute for what we already have. Social Security may best be understood not as a general form of insurance against destitution in old age, but as a hedge against the failures of our investments in children. In other words, Social Security's principal function is to protect us against the risk that, despite best efforts, we will be left bereft by selfish, ungrateful, or incompetent offspring.<sup>61</sup> If the nurture assumption is largely illusory, there may be no other way effectively to insure against that risk except having no children at all and deflecting our resources elsewhere.

Burggraf's proposal provides the worst of insurance worlds by making one type of insurance mandatory (thus limiting substitution away to various options that are more responsive to individual circumstances and risk averseness) while failing to insure against the most intransigent risk of all. The program leaves parents completely vulnerable to the vicissitudes of child outcomes, against which they may need and want protection.<sup>62</sup> Assuming that little can be done to reduce the risk that parents' investments in children will go bad, the parental dividend's failure to mitigate those risks may in some cases have the perverse effects of discouraging childbearing or causing parents to shunt resources away from existing children in favor of alternative investment strategies, such as retirement accounts, that are more likely to yield a reliable return. Moreover, the very same intransigence that makes insurance against the risks inherent in parenthood so valuable would also serve as a hedge against any moral hazard from protecting parents against the consequences of producing bad children. If the nurture assumption has little bite over the range of behaviors at issue—if there is no systematic and reliable relationship between parental investments beyond the decent minimum and children's future productivity or pathology—it is hard to see why society has much practical interest in blocking the formation of a pooled insurance fund that allows members of a generation to draw against the

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60 It has been argued, however, that the causation runs in the other direction; that is to say, that Social Security has helped to erode those conventions. See, e.g., DAVID FRUM, *DEAD RIGHT* 193-94 (1994); Jennifer Roback Morse, *Chopping the Family Tree*, *FORBES*, Oct. 5, 1998, at 86.

61 For a discussion of the difficulties that could be expected to attend the development of human capital markets across generations (including risks inherent in the time lag, the problem of the inability to contract due to the immaturity of children, and the risk inherent in the vicissitudes of the outcomes of childrearing), see Wax, *supra* note 31.

62 Burggraf does suggest the creation of a means-tested subsistence benefit program for the childless or for parents whose offspring fail them completely. See BURGGRAF, *supra* note 1, at 80-81. But that program is intended to be *de minimus* under her scheme.



efforts of others.<sup>63</sup> Even if Social Security induces some marginal disinvestment in children due to diminished parental concern about how their children will turn out, this behavior may nevertheless produce little systematic effect on overall social well-being. The premise of moral hazard is that behavioral incentives affect behavior and that behavior makes a difference. In the case of parent-child relations, that difference may not hold, or the relationship may simply be too weak to matter.

## V. Other Benefits of Social Security Foregone

In addition to sacrificing much-prized insurance against lack of effective control over child outcomes, Burggraf's program fails to deliver other valuable benefits of the Social Security program as currently structured. Socialized pension benefits provide independence that is precious to children and parents alike. Mutual dependence, whatever its potential payoffs, entails a distinctive sacrifice of freedom, and freedom is valuable in itself. Social Security has not meant that children need not worry about their parents nor parents about their children. But neither parents nor children need worry nearly so much. This freedom permits children to make choices or develop life plans that are fundamentally incompatible with primary responsibility for their aged parents' well-being and livelihood.<sup>64</sup> Likewise, parents are less concerned about their children's economic fate or about maintaining amicable relations with them. To be sure, Burggraf's proposal potentially mitigates parents' concern with staying on their children's good side by mandating financial support out of children's own earnings. Parents will nonetheless still retain a strong interest in controlling economic aspects of their grown children's lives and will be tempted to push children into jobs or careers with bigger monetary payoffs in the market, regardless of talents or interests. But it is precisely from the incentive to force children into a course that will not promote their happiness that parents might wish to be free. Parents may

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63 As Kenneth Abraham has observed:

Few people in our society object, on grounds of fairness, that the amount of risk distribution people choose to have through private insurance is excessive. No one thinks it is unfair or immoral that people do not have to bear all the risks of their activities. If we are ever concerned that people have chosen to share risk excessively, our concerns are grounded in reasons of efficiency and loss prevention. Our society worries little if at all that we tamper with fate by purchasing insurance coverage.

KENNETH S. ABRAHAM, *DISTRIBUTING RISK: INSURANCE, LEGAL THEORY, AND PUBLIC POLICY* 18 (1986).

64 For a sensitive discussion of this point and others pertinent to the modern welfare state's balance between independence and connectedness, see Jeremy Waldron, *When Justice Replaces Affection: The Need for Rights*, in WALDRON, *LIBERAL RIGHTS* (1993).

prefer their children to pursue their own interests and therefore would not wish to participate in a system that might strengthen incentives to frustrate that preference. A socialized system of old-age support allows parents to confer the gift of disinterest in their children's choice of career. That benefit may be lost if Burggraf's parental dividend proposal is adopted.

The same point applies to the effect the parental dividend is likely to have on such social practices as children taking the time to "find themselves" by prolonging their education, engaging in extensive travel or leisurely pursuits, or hopping from job to job. Some young people may be more reluctant to engage in these strategies for fear of depriving their parents. It is more likely, however, that parents will respond to the financial incentive to nag, steer, or pressure their children prematurely into moneymaking endeavors. In addition to sacrificing children's (and parents') consumption value from alternative pursuits, this steering (if effective) may be inefficient in the long run. The imperative to hurry up and make money may result in an inferior match of people and employment.<sup>65</sup>

Burggraf's proposal is also problematic in its unavoidable emphasis on the monetary value of children's activities. The proposal selectively recognizes only the element of parental work or investment that generates monetary returns, because the parental dividend fund necessarily contains only cash. Moreover, the monetary returns must take the form of taxable earnings or income to the child, which in itself raises the specter of asset shuffling and sheltering galore. That Burggraf's proposal takes account only of pecuniary returns has a number of paradoxical and perverse consequences. First, the job market may feel some effects. Well paying positions will attract even more applicants. Jobs that pay less will see a drop in the supply of well trained and capable workers. That result may well add to the devaluation of traditional female functions. It is ironic that low paying jobs, which often tend to be associated with femininity and caretaking roles, may go begging under a proposal that seeks to reward the type of "women's work" that is claimed to be undercompensated, underappreciated, or denigrated under current arrangements.

This effect will find its most extreme expression in parents' likely attitude towards children who elect to stay out of the labor market altogether in favor of full-time caretaking. Those children will, of course, be disproportionately female. Since full-time mothers and homemakers will pay nothing into the parental dividend fund, parents cannot be expected to look with customary equanimity upon this option for their

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<sup>65</sup> See, e.g., J. Hoult Verkerke, *Legal Regulation of Employment Reference Practices*, 65 U. CHI. L. REV. 115, 117 n.7 (reviewing studies suggesting that some degree of job change and employee turnover, by allowing workers "to search for another job that better matches their abilities," helps to "promote[] efficiency" in job markets).

daughters. The penalty that parents of caretaking children can expect to pay may have a number of consequences. First, parents will come to favor sons over daughters more than they perhaps already do. Women tend to earn less than men of similar age and education. Therefore, sons' expected earnings and expected contribution to any parental dividend fund will as a general matter be greater than daughters' regardless of whether daughters take on caretaking roles. But daughters' tendency to sacrifice paid work to domestic activities will also undermine their projected contributions to the dividend fund and their value in parents' eyes. All these factors might encourage parents to invest more heavily in their sons' education or to favor their male offspring in other ways.

Thus, parental preference will add to whatever pressure already exists on women to favor paid over unpaid domestic work. A program that starts out with the objective of rewarding and encouraging traditional women's work will have the effect of discouraging the very activities it seeks to promote. Even more unfortunately, the parental dividend will enhance the conflicts women already feel from the need to function as both breadwinner and caretaker by pitting a woman's interest in investing in her own children (who will eventually pay into her parental dividend fund) against her parents' pressure on her to go out and earn a living (and pay more money into theirs). Women's parents will want them working early and often, but the daughters' own self-interest will dictate bearing children and caring for them reasonably well. This bind will be especially acute for single mothers, who are already buckling under the pressure of the conflicting demands of their various roles.

Burggraf appears to recognize this problem, but her proposed solution raises as many difficulties as it cures. On the theory that "parents who produce a family caretaker contribute as much to the next generation's reproductive success as do parents who produce a family breadwinner," Burggraf suggests that married couples contribute an equal amount, based on the unit's total income, into funds for both spouse's parents, thus charging the breadwinner in a traditional family with support for two sets of parents.<sup>66</sup> Burggraf sees this "split dividend" as parallel to proposals for reforming Social Security through the creation of "personal security accounts," whereby family wage earners contribute an amount prorated to half of total family income to earnings accounts earmarked separately for husband and wife.<sup>67</sup> But the drawbacks of the split dividend parallel some

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66 Burggraf states that "[i]f Social Security were converted to a parental dividend, taxes should be based on a couple's joint return and the dividends distributed equally between the parents of husband and wife." BUGGRAF, *supra* note 1, at 130.

67 See *id.* These accounts have been proposed as a more equitable alternative to the current system, which designates the nonearning or lower-earning spouse as a secondary beneficiary on the breadwinner's account. See, e.g., Mary E. Becker, *Obscuring the Struggle: Sex Discrimination, Social Security, and Stone, Seidman, Sunstein & Tushnet's Constitutional Law*, 89 COLUM. L. REV. 264, 286

of the difficulties inherent in the transition to personal security accounts based on income splitting within the current system. As compared to making each spouse responsible for his or her own parents, this arrangement greatly enhances men's premium on remaining single. Put another way, the arrangement tends to discourage marriage by adding to the burden of married men relative to single ones. Yet this effect potentially runs contrary to Burggraf's goal of achieving greater investments in children. Those investments depend on men's willingness to get married and stay married. Burdening breadwinners with the old-age support of two sets of parents potentially undermines both effects. Burggraf's proposal may also have unintended costs by creating incentives for parents to meddle perversely in their children's marital choices. Parents' ironclad control over their children's matches is a cardinal feature of closed, traditional societies. The temptation to exercise such control is irresistible when children are charged with the support of aging parents, since the economic fate of the children's family unit and the integrity of their marriage bears directly on how their parents will fare. But that control creates a conflict of interest between parents and children that has produced much human misery. In general, the greater share of unhappiness from parental control over marital choices has fallen on women, who would bear the brunt under the parental dividend scheme as well. Because men generally have superior labor market prospects, parents will be far more interested in the marital choices of their daughters than their sons and will bring greater pressure to bear on females to make a potentially lucrative or prudent match. Parents could also be expected to mount more opposition to their daughters' divorces than their sons', since divorce might terminate, or at least attenuate, the son-in-law's obligation to pay into in-laws' parental dividend fund.<sup>68</sup> Moreover, the incentives would work in the opposite direction for sons. Parents might do better if their sons delayed marriage and childbearing, because all the sons' earnings contributions would be earmarked for the parents' fund alone and would not have to be shared with the parents of a caretaking spouse. Once again, the effects may perversely impede family formation and heap disadvantages on women by virtue of their caretaking function.

Finally, Burggraf's proposal dramatically attenuates the redistributive component of the existing Social Security system, leaving behind only the intergenerational portion of that effect. A number of elements of

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(1989) (discussing an earnings sharing proposal); Karen Holden, *Social Security and the Economic Security of Women: Is It Fair?*, in *SOCIAL SECURITY*, *supra* note 11, at 91.

68 Burggraf suggests at one point that the obligation to pay into the fund of a former spouse's parents should survive divorce. See BURGGRAF, *supra* note 1, at 137-39. But if the contribution to an ex-spouse were adjusted to take into account any obligations to a new wife or dependants or the new wife's parents, the parents of ex-spouses could potentially suffer or their stake would appear less secure.

redistribution will be lost if Burggraf's system is adopted. As already noted, by exposing parents to the risk of child failure, Burggraf's proposal would enhance the value of the omnipresent option to remain childless and to invest the money that would otherwise be spent on children elsewhere. Indeed, Burggraf acknowledges that, although the parental dividend might affect the behavior of people who have already decided how many children to have, it can do little to encourage childbearing: "compared to the financial advantages of remaining childless, a parental dividend of any imaginable size would be very small change."<sup>69</sup>

The importance of the "opt out" as an end run around the parental dividend may well differ by social class, however. Foregoing childbearing carries costs in the form of the lost consumption value, or satisfaction, that parents take in their children. The poor might prefer to invest in children because they have fewer alternative consumption opportunities. Also, it is more difficult for those with low income to save, regardless of whether they have children. At best, they face enormous practical obstacles to putting money away against the future. Consequently, children have always been an important and often exclusive form of investment for persons of low income.<sup>70</sup> In contrast, wealthy parents can often afford to devote resources to other valuable investments yielding future returns. In other words, the well-off are in the position to diversify their investments as a hedge against risk. By exposing the poor differentially to an important form of investment risk from which they can otherwise obtain little protection, the proposal would have a potentially regressive effect.

Burggraf seems strangely indifferent to additional distributive effects of her proposal. Low-income workers would also probably be worse off under a parental dividend scheme than under the current arrangement for two additional reasons. First, the parental dividend abolishes a feature of the current program that gives individuals at the bottom of the earnings scale a far greater rate of return than higher income recipients on earnings contributions.<sup>71</sup> Indeed, in this respect, the current program effectively incorporates a subsidy running from high earners to low earners, which functions to offset the regressivity of the fixed percentage employment tax (FICA). By making each family circle responsible for supporting its own, Burggraf's plan shares a cardinal feature of the more extreme proposals for privatization: It abolishes the redistribution from rich to poor that is only made possible by pooling contributions across beneficiaries of different social classes and establishing a progressive benefits schedule.

Second, Burggraf's proposal entrenches the economic inequalities

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69 *Id.* at 206.

70 *See id.* at 79-80.

71 *See* LEVITAN ET AL., *supra* note 6, at 61-63; Chait, *supra* note 54 (noting how some privatization proposals nullify the progressively redistributive effects of the current program).

that are persistently transmitted from generation to generation. The children of the poor and lower-middle class, upon reaching adulthood, are far more likely to gravitate towards the lower end of the earnings scale than the children of the upper-middle class. In addition, wholesale child failure, in the form of criminality, drug addiction, or early death, is likely to be more common among the poor. It is unclear whether these patterns are caused by lower quality or quantity of investment on the part of individual lower-income parents or by less immediately pliable factors such as background conditions or fixed traits. But even if the causes of class immobility are potentially amenable to incentive effects, there is no reason to believe that the incentives created by the parental dividend proposal will significantly alter the tendency of low-income parents to produce low-income children. We know almost nothing about what parents need to do to transform lower-middle class children into middle class and upper-middle class adults. Even if we did, it is not clear that a mere change in the design of Social Security would induce less fortunate parents to do those very things. That the parental dividend would probably do little to promote social mobility means that poor parents will receive significantly lower retirement benefits than more affluent parents, with loss even of the modest mitigation inherent in the current program.

The relatively regressive effects of the parental dividend would, once again, be particularly hard on single mothers, who tend to be concentrated at the bottom end of the income scale and thus currently receive among the highest rate of return on their defined contributions. Burggraf's proposal already disfavors single mothers by effectively charging them both with the support of their own parents in old age and with the costs of bringing up their own children. Once again, the current system socializes some of those costs through redistribution across income classes. That feature would be abruptly terminated under Burggraf's proposal. Poor women would support poor parents and bring up poor children who would likely turn into relatively poor adults. Those poor children would in turn be charged with their own poor parents' support.

## Conclusion

The parental dividend proposal, by understandably focusing for simplicity's sake on relations between two generations within each family, takes too narrow a view. Its parochialism is both horizontal and vertical because it ignores important distributive issues among successive generations and among parents and children across families from different economic and social classes. An analysis that extends beyond two generations reveals that the parental dividend proposal does not end the tug of war between successive generations or reconcile their interests. Nor

can it. By making the adult working population responsible for supporting both the elderly and the younger generation, Burggraf's proposal does not fundamentally alter the character of generous, pay-as-you-go old-age support in an era of declining fertility. Such a scheme will necessarily function as a zero- or negative-sum game whereby the current generation's parents and children can only win at each other's expense. That conflict is not peculiar to the parental dividend. It is an inevitable feature of all societies in which population and total productivity do not march inexorably upward. Perhaps that conflict can be resolved only by subordinating the interests of the elderly to a collective duty towards generations yet unborn. But we have all but abandoned the customary expectation, which held sway for thousands of years, that the elderly will sacrifice for the young. That abandonment is evident in our fertility rates, our attitudes towards childbearing, and in the design of our old-age pension scheme.

Burggraf's proposal likewise represents an inadequate fix for the undervaluation of off-market, caretaking work, or for any underprovision for children in general. On the contrary, by putting the force of a politically powerful group—the elderly—behind market work, and setting it against a politically powerless group—children—that stands to benefit most from some parents refraining from careerism or high levels of paid employment, Burggraf has created a program that will lead society to pay even less attention to children than it now does. This consequence, perverse and unintended though it may be, can be traced to a fundamental feature of Burggraf's proposal, which insists upon cashing out the social value of the caretaker's investment in market terms. Parents and caretakers invest in human capital. For Burggraf, human capital must prove itself in the market. Any element of value or investment payoff that fails to convert into earnings simply drops from the equation and is conveniently forgotten. But then what becomes of the ongoing need to invest in future generations? The family is not a closed circle, but a chain, in which the investment process takes place largely outside the marketplace and never entirely crosses over. Some portion of value and human effort always remains on the nonmarket side, never to be fully assessed in terms of its pecuniary currency. In trying to capture that element for one generation only, Burggraf has broken the never ending chain. In the process she has dropped some important links.

One alternative to the dilemma posed by the persistence of human capital production outside the marketplace may be to try to close down the non-market sector or at least drastically reduce its scope. The economist Barbara Bergmann has recently recognized the dilemmas posed by the permanent existence of a nonmarket, direct-exchange economy and has proposed to solve the problem by, in effect, abolishing or dramatically

shrinking that sector.<sup>72</sup> Bergmann believes that as long as market and nonmarket sectors are separately maintained, women's work will be undervalued and women's efforts will not be adequately rewarded. Only if traditional women's work is priced on a market along with other forms of labor will its true value be revealed and prove less vulnerable to manipulation. She therefore proposes unification of the market and nonmarket sectors by moving to "a high degree of commodification of the tasks that the present gender system assigns as unpaid duties to women."<sup>73</sup> But Bergmann's solution rests on a premise that Burggraf clearly does not share: that nothing important will be lost by substituting services obtained on the market for most unpaid services provided at home. Or perhaps Bergmann does recognize the unique value of specific performance, but would sacrifice that value added for her greater goal.

The contrast between these approaches of the two feminist economists, Bergmann and Burggraf, is instructive. As radical as Burggraf's scheme may appear to those who cherish the current program of old-age support and resist its reform, the centerpiece of her plan is, after all, a proposal to reform Social Security. Bergmann goes far beyond just tinkering with social programs and legal rules for existing institutions. She wishes to produce a fundamental and sweeping transformation of the key facts of social life. In the end, Burggraf's book founders because it places far too much weight on one policy device. This is not to deny that the Social Security system is in jeopardy or that it needs reform. It surely is and it surely does. But this need is largely traceable to the cultural and social facts of modernity rather than to conditions created by the peculiarities of the design of the program itself. Burggraf's prescription is, alas, no antidote to what ails us, and may in fact leave us worse off.

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<sup>72</sup> See Barbara R. Bergmann, *The Only Ticket to Equality: Total Androgyny, Male Style*, 9 J. CONTEMP. LEG. ISSUES 75 (1998).

<sup>73</sup> *Id.* at 86.